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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. RANDY SHAW, Defendant and Appellant.	C080333 (Super. Ct. No. 13F06102)

A jury convicted defendant Randy Shaw of one count of burglary, deadlocked on another burglary count, and acquitted him of attempted burglary. On appeal, defendant contends: (1) insufficient evidence supported his burglary conviction because he was sufficiently intoxicated to negate burglary intent; and (2) the trial court erred in admitting evidence of his convictions for burglary in 2012 and vehicle theft in 2013. As to both contentions, we disagree and affirm.

BACKGROUND

A. Defendant Comes to the Door of a House (Attempted Burglary; Count Three)

Close to midnight, defendant came to a house where several men were inside playing video games. He knocked on the door. With the door still locked, the men asked defendant who he was. Defendant said: "[L]et me in, I'm a friend of yours." The men told him he was not their friend. They then heard defendant open a gate and go into the backyard. The men called 911.

B. Defendant Enters a Garage (Burglary; Count One)

A little later that night, a woman was startled by the sound of her garage door opening. Her husband and two children were asleep. She woke her husband and went to investigate. Through her kitchen window, she saw defendant in their attached garage. She called 911.

After about five minutes, defendant left the garage through a side door, came into the back patio, and approached the sliding glass door to the house. The husband screamed at defendant to go away. Defendant did not react. Defendant tried to open the sliding glass door, but about 30 seconds later, he left in a calm, nonchalant fashion.

After he left, the family saw that defendant had been in their car that was parked in their driveway. He had rifled through the glove box and door compartments. He had also used the remote inside to open the garage door. The garage door was broken and made a loud grinding noise when opening.

The family van was inside the garage. Defendant had opened the van glove box as well as the console between the driver and front passenger seat. The contents of both were strewn about the van. But nothing was taken.

C. Defendant Enters a Couple's Home (Burglary, Count Two)

A little later that night, a couple was watching TV, when defendant entered their house through the unlocked front door. Defendant said: "I need keys. I need car keys." About seven minutes later, the husband managed to steer defendant out of the house.

Outside, the husband flagged down a passing police officer and pointed to defendant who was briskly walking away.

D. Defendant's Arrest

The officer saw defendant and told him to stop and get down. Defendant complied, appearing to understand commands. When asked, defendant gave his name. To the officer, defendant was clearly in an altered state. Defendant was sweaty, which the officer recognized as a symptom of methamphetamine.

To a second responding officer, defendant was clearly intoxicated and under the influence of methamphetamine. He exhibited fidgety and jerky movements, his motor skills were "[s]omewhat" impaired, and he was sweating profusely. But he could walk and complied with commands to move to the patrol car.

Another officer saw defendant behaving oddly and showing signs of being under the influence. He was speaking "gobbley gook" and rambling incoherently. But he could follow commands.

Defendant was carrying a backpack, containing (among other things) two screwdrivers, binoculars, and a flashlight — but no weapons.

E. The Trial Court Admits Evidence of Two of Defendant's Past Crimes

Before trial, the prosecution moved to admit evidence of five of defendant's prior convictions: second degree burglary in 2005, 2007, and 2012; vehicle theft in 2013; and burglary and vehicle theft in 2006. The court refused to admit three of the convictions, finding them too dissimilar or lacking in facts.

The court, however, admitted evidence of a 2013 vehicle theft conviction. In that incident, a car was stolen from the victim's work. When the car was later discovered and returned to the victim, items were missing. Those items were discovered in defendant's car. Defendant was also found with about 25 shaved keys.

The court noted the facts differed from the charged offenses, but the dissimilarities did not outweigh the high probative value for intent, particularly given the prosecution's

theory that in this instance, defendant was trying to steal a car. The court also noted this occurred only two months before his current offense.

Under Evidence Code section 352, the court concluded the evidence would not confuse the jury nor consume undue time. The court noted the evidence was prejudicial — which is true for all such evidence. But the probative value was high and not outweighed by possible prejudice.

The court also admitted evidence of a 2012 burglary. In that incident, defendant was seen breaking a window of a closed Weight Watchers store and sneaking in. The court noted the offense involved entry into a building with intent to steal, which was at the heart of the issue in this case. It had high probative value, which was not substantially outweighed by possible prejudice; nor would it cause confusion or consume undue time.

F. The Defense's Expert Testifies to the Effects of Methamphetamine

At trial, an expert testified for the defense. He testified that at increased doses, the effects of methamphetamine change from stimulation to predominantly confusion. If the dose is high enough, the person becomes disoriented, confused, and unable to participate well with their surroundings.

People with methamphetamine intoxication are commonly both incoherent and physically active. They are confused but not as to everything. They can comply with some basic commands. They can move a lot and even do things like drive a car. Yet they cannot speak coherently or know where they are. The expert recalled a patient who was driving a motorcycle at high speed but when stopped could not say his name.

Someone highly intoxicated may do things repeatedly and appear on autopilot. They might perform "a specific movement like walk, turn round, walk back repeatedly without really having much conscious knowledge of it."

Profuse sweating can be an indication that someone has consumed a large quantity of methamphetamine. Profuse sweating could also indicate the dose is coming down;

that they have passed the peak level and are beginning to have proper thermal regulation (low doses impairs sweating). With severe stimulant intoxication, individuals can exhibit jerky movements (myoclonus). They can also have bizarre repetitive speech patterns.

The expert was asked if he could estimate the psychological state (clear minded or confused) of someone exhibiting profuse sweating, jerky, fidgety movements, and incoherent speech. The expert responded, "you'd have to ask them what their mental state is," but, he added, intoxicated individuals show those signs.

Under cross, the expert agreed that someone using methamphetamine may also feel more confident or invincible, and someone under the influence could make goal-oriented decisions and could, for example, act with the specific intent of putting gas in their car. The expert conceded it is possible to be under the influence of methamphetamine and still know exactly what you are doing — however it is dose dependant. The expert also conceded he had not evaluated defendant and could not provide "a specific opinion" regarding defendant's drug use that night.

G. Verdict and Sentencing

The jury convicted defendant of one count of first degree burglary (Pen. Code, § 459; count one), for the incident involving entering a garage. It deadlocked on the other burglary count (Pen. Code, § 459; count two), for the incident involving entering the couple's home. And it acquitted him of attempted burglary (Pen. Code, §§ 664/459; count three), for the incident where he knocked on the door and said, "let me in, I'm a friend of yours."

DISCUSSION

I
Substantial Evidence Supports the Finding of Burglary Intent

On appeal, defendant first contends the finding of burglary intent is not supported by substantial evidence. He concedes he entered the victim's garage without authorization, but argues the evidence was insufficient to establish intent because his

intoxication from methamphetamine prevented him from forming intent to commit a felony. He reasons he was clearly intoxicated: he had jerky and fidgety movements, sweated profusely, and spoke incoherently. Every officer encountering him concluded he was under the influence. And, though he complied with the officers' commands, as his expert explained, intoxicated individuals can comply with simple commands and perform complex motor behaviors while not being able to perform fundamental tasks with their brain or process information properly.

He further reasons his conduct was inconsistent with conscious wrongdoing. When he opened the garage, it made a loud sound, yet he did not leave to avoid detection. And when a victim screamed at him, he was nonresponsive and moments later left nonchalantly. Similarly, there was no evidence he entered the garage to steal anything: nothing was stolen, he had no weapons, and there was no evidence he used the tools in his backpack to take anything. We disagree.

Burglary requires unlawful entry with the specific intent to commit a felony. (Pen. Code, § 459; *People v. Allen* (1999) 21 Cal.4th 846, 863, fn. 18.) Burglary intent may be inferred from the facts and circumstances. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.) The jury determines, in light of all the evidence, whether to draw such an inference. (*People v. McFarland* (1962) 58 Cal.2d 748, 754-755.) And whether a person was sufficiently intoxicated to negate burglary intent is a question of fact for the jury. (*People v. Smith* (1968) 259 Cal.App.2d 868, 870.)

In a challenge to the sufficiency of the evidence, we review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) Substantial evidence is evidence that is credible, reasonable, and of solid value such that a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*Ibid*.) We do not reassess witness credibility, and we draw all inferences from the evidence that support the jury's verdict. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1382.)

If the circumstances reasonably justify the jury's intent finding, the judgment may not be overturned even if the circumstances might also reasonably support a contrary finding. (*People v. Lewis* (2001) 25 Cal.4th 610, 643-644.) Accordingly, where evidence of intoxication is presented to a properly instructed jury, and the jury considers the evidence to determine if the defendant had the requisite intent, the verdict will not be disturbed if the facts are sufficient to support the implied intent finding. (*People v. Coleman* (1942) 20 Cal.2d 399, 409, overruled in part on other grounds by *People v. Wells* (1949) 33 Cal.2d 330, 355.)

Here, the record supports the intent finding. Late at night, defendant opened a stranger's parked car. He rifled through the contents (apparently looking for keys), then used the remote to open a garage door. Inside the garage, he opened a parked van. He rifled through its contents. He then went into the back patio area, where he tried to open a sliding glass door to the house. All the while, he carried two screwdrivers, a flashlight, and binoculars.

These circumstances show a modicum of sophistication. He took multiple steps to gain entry to the garage and he searched places likely to contain car keys. And two months earlier, he stole a car. The year before that, he burglarized a Weight Watchers. From these circumstances, intent can reasonably be inferred, and the claim of voluntary intoxication can reasonably be discounted.

Moreover, the expert's testimony did not preclude the possibility of defendant forming intent. The expert allowed that someone under the influence of methamphetamine could form intent and engage in goal-oriented conduct — though it is highly dose dependant. Methamphetamine can also boost courage and instill a feeling of invincibility. And the expert conceded, he was not testifying to defendant's actual intoxication.

Thus, while the evidence might also have reasonably supported a contrary finding, the circumstances are sufficient to support the verdict. (See *People v. Lynch* (1943)

60 Cal.App.2d 133, 139 ["While the circumstances alluded to by appellant undoubtedly afforded opportunity for a persuasive argument to the jury against the existence of a felonious intent, we cannot say that the determination of the jury in the instant case, that such intent was present, does violence to reason"].)

II
The Trial Court Properly Admitted Evidence of Defendant's Past Crimes

Defendant next contends the trial court erred in admitting evidence of his prior crimes, under Evidence Code section 1101, subdivision (b) (hereafter section 1101(b)). He argues there was no similarity between his prior crimes and the three charged offenses. "Most significantly," he adds, "there was no evidence presented that [he] was in any state of intoxication during either the Weight Watchers burglary or the vehicle theft . . . ." Also, the location, manner of commission, presence of people, and general aspects of the past crimes was not similar to his charged offenses. He further argues, for the same reasons, that the evidence should have been excluded under Evidence Code section 352 because the probative value was outweighed by prejudicial effect.

Section 1101(b) permits evidence of past crimes where relevant to prove, among other things, intent. (§ 1101(b); *People v. Leon* (2015) 61 Cal.4th 569, 597.) Relevance "depends, in part, on whether the act is sufficiently similar to the current charges to support a rational inference of intent, common design, identity, or other material fact." (*Leon,* at p. 598.) But the " 'least degree of similarity' " is required where offered to prove intent. (*Ibid*.) For intent, the similarity need only be enough to support the inference that the defendant " ' " 'probably harbor[ed] the same intent in each instance.' " ' " (*Ibid*.) We review a trial court's decision to admit evidence of other crimes, for abuse of discretion. (*Id*. at p. 597.)

Here, defendant's 2012 burglary and 2013 vehicle theft are sufficiently similar to the charged offenses. That defendant previously burglarized a store and stole a car gives rise to an inference that in this instance he broke into the garage intending to steal. (See

also *People v. Romero* (1966) 244 Cal.App.2d 495, 498-500 [evidence of three burglaries properly admitted where defendant claimed that he was too intoxicated to form burglary intent].)

And defendant's attempt to distinguish his prior crimes, because he was not intoxicated while committing them is not well taken. Past crimes are relevant to present intent because when a person *acts* similarly in similar situations he likely harbors the same intent in each instance. (See *People v. Rocha* (2013) 221 Cal.App.4th 1385, 1394.) Thus, the fact that defendant was not intoxicated when committing his past crimes does not preclude their use under section 1101(b).

Finally, we conclude the trial court properly weighed the evidence under Evidence Code section 352. Accordingly, the trial court properly exercised its discretion in admitting evidence of defendant's prior convictions.

DISPOSITION

The judgment is affirmed.

/s/
Blease, Acting P. J.

We concur:

/s/
Hull, J.

/s/
Hoch, J.